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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/060,835	01/30/2002	J. Peter Guggenbichler	VOS0005/US	8399
33072	7590	03/17/2006		
KAGAN BINDER, PLLC SUITE 200, MAPLE ISLAND BUILDING 221 MAIN STREET NORTH STILLWATER, MN 55082				
			EXAMINER EASHOO, MARK	
			ART UNIT 1732	PAPER NUMBER

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/060,835

Applicant(s)

GUGGENBICHLER ET AL.

Examiner

Mark Eashoo, Ph.D.

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-12 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-12 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892).
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites the limitation "said plastic". There is insufficient antecedent basis for this limitation in the claim because the claim limitations do not clearly set forth if the precursor contains a plastic.

It is noted that that if applicant argues that the term has support in the preamble (ie. plastic body), then the examiner would take the position that the claim 9 is incomplete because it omits an essential process step linking this treating material to the claimed process steps.

For the purpose of further examination the claim has been interpreted as "said plastic" being part of the precursor as set forth in the applicant's specification (para. 15 of US 2003/0049295 A1).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4, 6-12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 695 501 A1 in view of Weaver (US Pat. 2,806,798) and Krall et al. (US Pat. 5,976,562).

EP 0 695 501 A1 teaches the basic claimed process of forming a antimicrobial plastic body, comprising: molding at a precursor contain inorganic particles that have been treated with a metal colloid solution (3:5-60); inorganic particles of aluminum oxide and silica (3:30-40); molding precursors comprising synthetic polymers (3:50-55); kneading (3:55-58); and a silver colloid (3:40-45).

EP 0 695 501 A1 does not teach forming a metal colloid that is stabilized using a protective agent such as gelatin. However, Weaver teaches forming a silver colloid that is stabilized using a protective agent such as gelatin (1:46-2:35). EP 0 695 501 A1 and Weaver are combinable because they are concerned with a similar technical difficulty, namely, forming solutions containing extremely fine particles (ie. colloids). At the time of invention a person of ordinary skill in the art would have found it obvious to have formed a silver colloid that is stabilized using a protective agent such as gelatin, as taught by Weaver, in the process of EP 0 695 501 A1, and would have been motivated to do so because EP 0 695 501 A1 desires to use extremely fine particles (3:41) and Weaver teaches how to make or provide them (1:45-55).

EP 0 695 501 A1 does not teach making articles from polyurethane containing fillers or use of treated plastic grnaules. However, Krall et al. teaches forming articles from polyurethane containing fillers/additives (3:15-60). Krall

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et al. also teaches using metal treated granules in the molding of articles and may be treated/coated in various ways (3:1-60) EP 0 695 501 A1 and Krall et al. are combinable because they are from the same field of endeavor, namely, forming bactericidal plastic articles. At the time of invention a person of ordinary skill in the art would have found it obvious to have formed articles from polyurethane containing fillers, as taught by Krall et al., in the process of EP 0 695 501 A1, and would have been motivated to do so because Krall et al. suggests that alternative articles such as catheters could be made and sold for economic benefit.

Response to Arguments

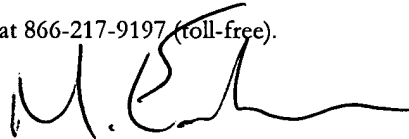
Applicant's arguments with respect to claims 1-4,6-12 and 16 have been considered but are moot in view of the new ground(s) of rejection.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Eashoo, Ph.D. whose telephone number is (571) 272-1197. The examiner can normally be reached on 7am-3pm EST, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Colaizzi can be reached on (571) 272-1196. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Eashoo, Ph.D.
Primary Examiner
Art Unit 1732

15-Mar-06
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